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Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-385

PRINTING SPECIALTIES & PAPER PRODUCTS UNION NO. 447, INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA, AFL-CIO,

Petitioner,

—v.—

PRIDE PAPERS-AARONSON BROS. PAPER CORPORATION, PRIDE PAPERS, DIVISION OF AARONSON BROS. PAPER CORPORATION, AARONSON BROS. PAPER CORPORATION, ROITMAN PAPER CO., INC. and TERMINAL PAPER CONVERTING, INC.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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The respondents contend that the question presented has not been properly stated by the petitioner. The respondents would restate it as follows:

Question Presented

Whether the collective bargaining contract to which petitioner and respondents Roitman Paper Co. Inc. and Terminal Paper Converting, Inc. were parties was breached by the fact that said respondents consolidated with another employer which had a different collective bargaining contract with a different union.

It must be noted that respondents Roitman and Terminal had a total of seven employees. Aaronson Bros., the company with which they consolidated, had a total of twenty-six employees—nearly four times as many. Roitman and Terminal terminated operations at their location and all operations were consolidated at Aaronson Bros.' regular location. Aaronson Bros. had a collective bargaining agreement with a different union which resulted from a collective bargaining relationship which had existed since before petitioner organized and represented the employees of respondents. Respondents and Aaronson were in the same industry—i.e., they were "converters" of paper.

Petitioner emphasizes the fact that its collective bargaining contract was with a trade association, as if to imply that that association covered the collective bargaining contracts of all the employers in the industry. That is not the fact and the record in this case does not so indicate. There were many employers in the industry who were not members of that association, such as Aaronson Bros. with which the consolidation was effectuated. Moreover, several of the employers in the industry did not have collective bargaining contracts with petitioner union. In fact some firms, like Aaronson, apparently had contracts with unions other than petitioner.

The petitioner's statement of the question presented says that the consolidation agreement specifically provided for the assumption of the petitioner's collective bargaining agreement by the consolidated company. This is not correct, as was pointed out by the appellate court. The obligations assumed by the consolidated company were the obligations which legally arose under the collective bargaining agree-

ment between petitioner and respondent signatory. Petitioner relies on this assumption. But it is patently obvious that this clause was only intended to obligate the consolidated company to undertake the obligations which respondents Roitman and Terminal legally had without relation to any consolidation. In fact, no new obligations arose nor could they be imposed on the consolidated company by virtue of this wording in the consolidation agreement if, in fact, the said obligations were not pre-existent. The kinds of obligations which did exist insofar as respondents were concerned clearly referred to the contractual arrangements between petitioner and respondents, such as payments to be made to welfare and/or pension funds, payments to individuals, as long as they worked for respondents at respondents' location, in accordance with collective bargaining terms, etc. All of these obligations were completely fulfilled by respondents. And petitioner does not deny this. Furthermore, even if one were to impose an additional non-contractual obligation on respondents based on developing law, i.e., the duty to bargain with petitioner on the impact of the consolidation, it is apparent that respondents fulfilled that duty here. The evidence of negotiations between petitioner union and respondent companies on this point is clear, uncontravened and not denied by the petitioner.

In its opinion, the appellate court said that the provision for the assumption of the obligations of the collective bargaining agreement between Roitman-Terminal and the petitioner cannot properly be interpreted to mean that respondents' employees could not be terminated, or that respondents were required to continue abiding by the old contract at the new bargaining unit in the new location. The

appellate court pointed out that the consolidation agreement contained no provision with respect to the employees of what was formerly Aaronson Bros. Paper Corp. and that the assumption provision clearly referred to those contractual obligations of Roitman-Terminal. (Appendix A, pages 4a, 3a.)

The petitioner's collective bargaining agreement contained no provision prohibiting termination of the business, nor merger or consolidation with another, nor any provision that its terms shall become binding upon any consolidated company. Emphasis should be placed on the fact that the company with which the consolidation took place was covered by a collective bargaining agreement entered into in good faith with another union long prior to the collective bargaining agreement between the petitioner and Roitman-Terminal.

Petitioner union did not invoke arbitration provisions of its contract. At no time did it try to have its grievances against Respondents settled by arbitration, although provisions for such existed in the collective bargaining agreement. Thus, provisions of *Wiley* v. *Livingston,* 376 U.S. 543 do not come into play and its ruling is not applicable in the instant case, as both the trial court and the appellate court unanimously agreed. Moreover, petitioner did not seek recourse to National Labor Relations Board procedures for remedy and redress of its grievances—probably because it knew that under existing law no such relief could be granted.

The trial court and the appellate court correctly decided the case and there is nothing that warrants review by this Court.

We do not think that any detailed discussion of the cases cited by the petitioner is necessary or helpful to this Court. Frankly and simply put, these other cases do not apply to the facts as they exist here. All of the cases cited were decided on different principles and/or on distinctive fact situations. To analyze and distinguish these cases would unduly take the time of this Court. We believe that the discussion of the cases cited by petitioner and rationalization of the legal doctrines involved were thoroughly and correctly discussed by both the trial court and the appellate court. And the latter unanimously upheld the trial court and respondents' position. The facts in this case are simple and really not in dispute. A small company with seven employees, finding itself in business difficulties, for legitimate business reasons and not because of any anti-union motivation, decided to consolidate with a company in the same line of business at another location, with twenty-six employees (Appendix B, page 9a). The trial court and the appellate court both found that the consolidated company was not a "successor company", as described by the courts in their definition of "substantial continuity of identity."

The collective bargaining agreement of that small company (Roitman-Terminal) did not in any way prohibit that consolidation. Roitman-Terminal wished to faithfully discharge all its obligations to its employees under its collective bargaining agreement.

As we have seen, it did so. It also sought to assist its employees to avoid loss of work and have them go over to

the consolidated company at the new location. The problem there was that the other company at the other location had a different collective bargaining agreement with a different union. This agreement long antedated the Petitioner's agreement, to which the other company at the new location was not a party. The union at that location threatened to strike if the consolidated company recognized and/or dealt with Petitioner union. In fact, if it had done so, the respondents would have been guilty of an unfair labor practice. If the respondents had dealt with petitioner, they would have dealt with a minority union in the face of a contract already made between Aaronson Bros. and another union which was indeed a majority union. Furthermore, the union at Aaronson Bros. had a collective bargaining agreement with Aaronson Bros. which provided that that union would be the exclusive bargaining agent for the employees of Aaronson Bros. Thus, if respondents and/or the consolidated company recognized petitioner, they would be violating the provisions of a pre-existing collective bargaining agreement. And the realities of labor relations indicates that had they done so the incumbent union would have retaliated by arbitration, NLRB or court proceedings. In addition, as noted, it actually threatened to strike if this occurred. Thus, rather than be further enmeshed in what could have become a major jurisdictional dispute, respondents and the consolidated company honored their collective bargaining agreements and the consolidated company dealt with the majority union, not the minority union.

Thereupon, the petitioner sued for the specific enforcement of its collective bargaining agreement by the successor corporation (a form of relief never before granted in

circumstances like this) (Appendix B, page 10a), and for a declaratory judgment and for damages, which damages had they been recovered could have destroyed the businesses of the respondents. Arbitration was not demanded by either party.

Under these circumstances, the trial court and the appellate court both held that there was no substantial continuity in the new business enterprise so as to make the successor company liable to carry out the petitioner's collective bargaining agreement (Appendix A, page 5a; Appendix B, pages 12a and 13a). They held also that arbitration, ever. if demanded, would not be appropriate (Appendix A, pages 5a and 6a; Appendix B, pages 11a-13a).

It is respectfully submitted that no unique question of labor law exists. This is not even in a borderline area. The District Court and Court of Appeals have followed established and understood case law in their decision. Moreover, we submit that this has not only been the prevailing case law in the Second Circuit (see *McGuire* v. *Humble Oil & Refining Company,* 355 F.2d 352 [2d Cir. 1966], cert. denied 384 U.S. 988 [1966]), but is also the law in other circuits (see, e.g., *Southern Conference of Teamsters* v. *Red Ball Motor Freight, Inc.,* 374 F.2d 932 [5th Cir. 1967]; *Bath Marine Draftsmen's Assoc.* v. *Bath Iron Works Corp.,* 266 F. Supp. 710 [D. Maine 1967], aff'd 393 F.2d 407 [1st Cir. 1968]). We do not know of any cases in other circuits nor any subsequent cases in these circuits which come to a contrary conclusion.

The law concerning problems of this nature is well-settled, established and relied upon by practitioners in the field. For this reason and because it is also logical law

from both a theoretical and philosophical viewpoint and insofar as the practical exigencies of business are concerned, it should not be upset. On the contrary, the prevailing rulings in general and the unanimous decision of the appellate court in this case should be allowed to stand. We respectfully submit that further review is unnecessary.

CONCLUSION

It is respectfully submitted that the dismissal of the complaint by the trial court and the affirmance of the appellate court were correct, and that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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